IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1824 of 2007
with
CIVIL APPLICATION No. 4974 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
MAYABHAI NATHABHAI BHARVAD & 2 - Defendant(s)

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Appearance :
Ms. Tanuja Kachhi, Asst. GOVERNMENT PLEADER for Appellant(s) : 1,
None for Defendant(s) : 1,1.2.2
MR PREMAL S RACHH for Defendant(s) : 1.2.1
MR KISHOR M PAUL for Defendant(s) : 2,
RULE SERVED BY DS for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 25/04/2007

ORAL JUDGMENT

Present Appeal has been filed by the appellant, original-opponent No.2, State of

Gujarat, through Executive Engineer challenging the judgment and award dated 8.2.2006 passed by the learned ex-Officio Commissioner for Workmen's Compensation and Labour Court, Jamnagar in Workmen's Compensation [Fatal] Case No. 37/1999 by which the learned Commissioner has directed the appellant as well as opponents No. 2 and 3 herein to pay jointly Rs. 2,25,220 by way of compensation as well as further directing the appellant as well as opponent No.2 herein original-opponents No. 1 and 2 to pay penalty of Rs. 1,12,610. The appellant State of Gujarat has challenged that part of the judgment and award by which the learned Commissioner has passed the order directing the appellant to pay penalty of Rs. 1,12,610 and interest.

2. Today when the Appeal came up for final hearing, Shri Kishor M. Paul, learned advocate appearing on behalf of the opponent No.2 herein, original-opponent No.1, has submitted that the opponent No.2 has no objection if that part of

the order of the learned Commissioner by which the appellant is directed to pay penalty of Rs. 1,12,610 and also interest is quashed and set aside as the said amount is already paid by the State Government from the amount due and payable to the opponent No.2. It is submitted that an amount of Rs. 4,50,000 was due and payable to the opponent No.2 construction company by the appellant out of which an amount of Rs. 2,04,870 is paid by the State Government from the said amount towards penalty and interest and deducting the said amount of Rs. 2,04,870 the opponent No.2 is required to be paid balance amount of Rs. 2,45,130. He has submitted that this Appeal to that extent be allowed.

3. Under the circumstances, and with the consent of learned advocates appearing for the respective parties, the judgment and award dated 8.2.2006 passed by the learned Commissioner for Workmen's Compensation, Labour Court, Jamnagar, in Workmen's Compensation [Fatal] Case No. 37/99

is modified to the extent that so far as penalty and interest is concerned the same will be the liability of the opponent No.2 original-opponent No.1 Ketan Construction Company and that the appellant herein, State of Gujarat, Executive Engineer would not be liable to pay the amount of penalty as well as interest and to that extent the order passed by learned Commissioner for Workmen's Compensation is set aside. Accordingly the present Appeal is partly allowed.

4. It is not in dispute that the opponent No.2, Ketan Construction Company was entitled to a sum of Rs. 4,50,000 from the appellant out of which a sum of Rs. 2,04,870 is paid by the appellant towards penalty and interest and in view of the modification of the judgment and award passed by the learned Commissioner for Workmen's Compensation holding that the State of Gujarat, appellant-herein would not be liable to pay penalty and interest, deducting the aforesaid amount of Rs. 2,04,870 treating the same to have been paid for and on behalf of the opponent No.2

Construction Company, the appellant is required to pay the balance amount of Rs. 2,45,130 to the opponent No.2 herein. Accordingly, the appellant shall pay the said amount of Rs. 2,45,130 out of the amount of Rs. 4,50,000 lying with the State Government, after deducting Rs. 2,04,870, to the opponent No.2 as early as possible preferably within the period of four weeks from today. It is also further reported that now so far as the amount of Rs. 92,260 deposited by way of interest is concerned the same is lying idle. Under the circumstances, the learned Commissioner for Workmen's Compensation is directed to invest the said amount of Rs. 92,260 in the name of original-claimants in Fixed Deposit in any Nationalized Bank for a period of 5 years and the claimants shall be entitled to periodical interest on the said Fixed Deposit. It is also further ordered that there shall not be any loan, lien and/or advance on such Fixed Deposit and the same shall not be permitted to be withdrawn by the original-claimants.

5. For the reasons stated above and with the above directions, the Appeal is partly allowed. However, there shall be no order as to costs.

6. In view of disposal of First Appeal, no order in Civil Application No. 4974 of 2007.

[M.R. Shah, J.]

RMR.